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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2798 of 1998

WITH

SPECIAL CIVIL APPLICATION No 6767 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?
No.

MUMTAZ CINEMA

Versus

ENTERTAINMENT TAX COMMISSIONER

Appearance:

MR BS SUPEHIA for Petitioners

MR VB GHARANIYA, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/09/98

COMMON ORAL JUDGEMENT

Rule in both the petitions. Mr. V.B. Gharaniya, learned AGP waives service of notice of rule on behalf of the respondents.

2. The petitioner in both the matters runs a Cinema Hall in the name of 'Mumtaz Cinema (Talkies)' at Mehmdabad. His licence for running the Cinema Hall came to be cancelled by appropriate authority on the ground that he had not paid the entertainment tax which was due with the petitioner. However, ultimately by virtue of an order of this court, the Entertainment Tax Commissioner after considering all the aspects, passed an order dtd.26.3.98, holding that an amount of Rs.20,23,337.85p was due from the petitioner. Considering the direction of the High Court, it was also directed that the said amount to be paid by the petitioner in sixty instalments of Rs.44,965/-. The first instalment was required to be paid from April 1998. It is not in dispute that the petitioner has not paid any amount towards this amount.

3. The petitioner in Special Civil Application No.2798 of 1998 has sought for indulgence of this court for quashing and setting aside the order passed by the respondent no.1 (Annexure 'C' to the petition), and has further sought to restrain the respondents, their agents from enforcing the said order, and to fix the monthly instalment of Rs.10,000/- with a direction to the Government to grant fresh licence.

4. The petitioner in Special Civil Application No.6767 of 1998 seeking relief against the order of District Magistrate and Entertainment Tax Collector, Kheda, dtd.27.7.98, seeking a direction that the necessary licence for running the said Mumtaz Cinema (Talkies) be directed to be issued by the said authority.

5. Considering the fact that this Court has passed an order in Special Civil Application No.542/96 on 17.7.97, directing the petitioner to make a representation before appropriate authority and directing the appropriate authority to take decision in accordance with law, while bearing in mind the amount already paid by the petitioner on the basis of 600 seats and without touching the disputed questions to be decided by the Civil Court which has already been moved by the petitioner. The Entertainment Tax Commissioner has passed the impugned order and as such no interference is called for by this court.

6. While hearing this petition, the petitioner has given an undertaking today in the court to the effect that he shall abide by all the terms and conditions laid down by the Entertainment Tax Commissioner and shall start paying the instalments of Rs.44,965/- as directed

by him from 10th September, 1998. He has also given an undertaking to go on paying the monthly instalments on or before 10th of each month for a period of sixty months. He has also given an undertaking that over and above the monthly instalment, he would also pay regular tax payable every month as per the rules on 611 seats existing at present in the cinema. Some appeals are pending with the Collector, the liability that may be finally decided by the authority is also undertaken by him to be paid. He has given an undertaking to withdraw Civil Suit No.468/94 pending in the court of Civil Judge (S.D.) at Nadiad, subject to the condition that he will do so after his cinema start running and has sought the direction against the respondents to grant licence and to permit the petitioner to run the cinema with effect from 11.9.98.

7. Considering the facts and circumstances of the case, the following directions are given:

- a. In light of the undertaking given by the petitioner, it will be open for the petitioner to make a representation and tender an application for issuance of a fresh licence for running the cinema in question.
- b. The appropriate authority will decide that application/representation within four weeks of the petitioner tendering that application or representation, in accordance with law, after giving audience to the petitioner. Any time taken by the petitioner in availing audience will not be considered in this period. The petitioner shall withdraw all the pending litigations forthwith, except appeal before Collector, if any such pending, as against his undertaking that the suit will be withdrawn after the cinema start running.
- c. It is clarified that earlier orders passed by the appropriate authority for cancelling the then existing licence of the petitioner for running the cinema hall will not come in the way of this appropriate authority issuing a fresh licence, if otherwise, they come to the conclusion for issuing the licence.
- d. It is also clarified that the petitioner will be required to pay the instalments as undertaken by him pursuant to order of Entertainment Commissioner to meet with the amount that may be found due from the petitioner

in the appeal, if pending before the Collector,
and not considered by the Entertainment Tax
Commissioner while passing the impugned order
dtd.12-3-98.

8. In view of the above direction, Rule is made
absolute accordingly in both the petitions.

(A.L. Dave, J.)

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